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Dated: May 27, 2008 Electronic Signature for Richard LaCava: /Richard LaCava/

Docket No.: M0215.0001/P001
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Karl Manser

Application No.: 10/772,014

Confirmation No.: 4081

Filed: February 4, 2004

Art Unit: 3764

For: A STRUCTURE AND METHOD FOR
INCREASING PROPRIOCEPTIVE DEMANDS
ON FOOT, ANKLE AND LOWER LEG

Examiner: S. R. Crow

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

As required under § 41.37(a), this brief is filed more than two months after the Notice of Appeal filed in this case on February 27, 2008, and is in furtherance of said Notice of Appeal.

The fees required under § 41.20(b)(2), and any required petition for extension of time for filing this brief and fees therefor, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

In the event a fee is required or if any additional fee during the prosecution of this application is not paid, the Patent Office is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 50-2215.

If this communication is filed after the shortened statutory time period had elapsed and no separate Petition is enclosed, the Commissioner of Patents and Trademarks is petitioned, under

37 CFR 1.136(a), to extend the time for filing a response to the outstanding Office Action by the number of months which will avoid abandonment under 37 CFR 1.135. The fee under 37 CFR 1.17 should be charged to our Deposit Account No. 50-2215.

This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1205.2:

- I. Real Party In Interest
- II. Related Appeals and Interferences
- III. Status of Claims
- IV. Status of Amendments
- V. Summary of Claimed Subject Matter
- VI. Grounds of Rejection to be Reviewed on Appeal
- VII. Argument
- VIII. Claims
- Appendix A Claims
- Appendix B Evidence
- Appendix C Related Proceedings

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is:

Karl Manser

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

A. Total Number of Claims in Application

There are 18 claims pending in this application.

B. Current Status of Claims

1. Claims canceled: none
2. Claims withdrawn from consideration but not canceled: 1-8 and 14-18
3. Claims pending: 1-18
4. Claims allowed: none
5. Claims rejected: 9-13

C. Claims On Appeal

The claims on appeal are claims 9-13

IV. STATUS OF AMENDMENTS

Appellant filed a Response After Final Rejection on December 17, 2007, but did not amend the claims therein. The claims on appeal were last amended on June 26, 2007.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claim 9 is the only independent claim presently on appeal, and is directed to the embodiment shown in FIGS. 4A and 4B. The numbered paragraphs of the specification referenced below correspond to those numbered paragraphs of published application US2005/0170935 A1.

Claim 9 recites:

9. A belt kit for a treadmill (**Fig. 4A, #30; Fig. 4B, #32; [0014], [0029]**), the belt kit comprising:

at least two separate belts (**Fig. 4A, #30; Fig. 4B, #32**) dimensioned for use on the treadmill, the at least two separate belts (**Figs. 4A-4B, #30, #32**) each comprising a base (**#33**) having a plurality of projections (**#34**) extending upward from the base (**[0029]**);

a first belt (**#30**) of the at least two separate belts having a first continuous, consistent surface (**Fig. 4A, #33; [0029-30]**);

a second belt (**#32**) of the at least two separate belts having a second continuous, consistent surface (**Fig. 4B, #33; [0029-30]**),

wherein the first and the second surfaces are different from each other in at least one of a size of the plurality of projections and a surface treatment (**Figs. 4A-4B; [0029]**),

the first belt and the second belt are dimensioned for direct foot contact (**[0031]**), and

the first belt is dimensioned to impart proprioceptive demands on the foot, ankle and lower leg different from those of the second belt (**[0031]**).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. The rejection of claims 9, 10 and 12 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,925,183 to Kim in view of U.S. Patent No. 5,066,000 to Dolan and U.S. Patent No. 6,210,349 to Naruse et al.
- B. The rejection of claims 11 and 13 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,925,183 to Kim in view of U.S. Patent No. 5,066,000 to Dolan and U.S. Patent No. 6,210,349 to Naruse et al., and further in view of U.S. Patent No. 6,029,962 to Shorten et al.

VII. ARGUMENT

Claims 9-13 are currently pending, are the subject of this Appeal, and stand rejected in the present application. Claims 1-8 and 14-18 have been restricted and withdrawn from consideration.

Appellants respectfully submit that each of the pending claims is in immediate condition for allowance and requests that the Board order the withdrawal of the pending rejections.

A. Claims 9, 10 and 12

Claims 9, 10 and 12 have been improperly rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,925,183 to Kim in view of U.S. Patent No. 5,066,000 to Dolan and U.S. Patent No. 6,210,349 to Naruse et al. Appellant submits that claims 9, 10 and 12 patentably distinguish over the combination of Kim, Dolan and Naruse et al. for at least the reasons set forth below.

Among the limitations of independent claim 9 which are neither disclosed nor suggested in the prior art of record is a belt kit for a treadmill comprising “at least **two separate belts** dimensioned for use on the treadmill,” “a first belt of the at least two separate belts having a first continuous, consistent surface,” “a second belt of the at least two separate belts having a second continuous, consistent surface,” wherein “the first belt and the second belt are **dimensioned for direct foot contact**,” and “the first belt is dimensioned to impart proprioceptive demands on the foot, ankle and lower leg different from those of the second belt.” The use of such separate belts that impart different proprioceptive demands on the foot, ankle and lower leg, is advantageous in aiding persons during physical therapy, for example.

Neither Kim, Dolan or Naruse et al., teach or suggest such a belt kit for a treadmill. Specifically, Kim is directed to an indoor bicycle that simulates a road surface and requires the user to balance the bicycle during use. See Col. 1, lines 51-64 of Kim. There is simply no disclosure whatsoever in Kim of providing multiple belts with different surfaces.

In addition, there is no teaching or reasoning for modifying the device of Kim to provide at least two separate belts that are dimensioned for direct foot contact and to impart different proprioceptive demands on the foot, ankle and lower leg. Although Kim discloses that the treadmill surface is provided with irregularities to simulate a road surface, these irregularities are not designed

to impart proprioceptive demands on the foot, ankle and lower leg, as required by independent claim 9.

Kim simply does not provide any reason why one would remove the bicycle and use the treadmill standing alone, let alone use such a treadmill for altering the proprioceptive demands on the foot, ankle and lower leg. The device of Kim is just not designed for this purpose.

Dolan does not remedy any of the deficiencies of Kim. Dolan is directed to a portable multi-surface track. In the system of Dolan, a plurality of track sections, each with a different surface type, are assembled to form a single track that has different sections. Once assembled, the patient is guided along the track, uninterruptedly from different surface to different surface, to practice their walking and balance skills. See Dolan at Col. 2, lines 40-45.

It is respectfully submitted that one of skill in the art would have no reason to combine the teachings of Kim and Dolan. As stated above, Kim is directed to an indoor bicycle that simulates a road surface and requires the user to balance the bicycle during use. One of skill in the art would have no reason to alter the treadmill surface of Kim to incorporate the different, ever changing surfaces of Dolan. To do so would impede the purpose of Kim, which is to which is to provide a single, simple simulated road surface over which a user balances a bicycle during use.

However, assuming *arguendo* that there was a reason to combine the teachings of Kim and Dolan, one would not arrive at the present invention as defined in independent claim 9. At best, one would arrive at a treadmill for a bicycle that has a **single** belt with different consecutive surface types, and not at least two separate belts that are dimensioned for direct foot contact and impart different proprioceptive demands on the foot, ankle and lower leg.

Naruse et al. does not remedy any of the deficiencies of Kim and/or Dolan. Naruse et al. is directed to a foot massager with interchangeable pads. These interchangeable pads are not dimensioned to impart proprioceptive demands on the foot, ankle and lower leg, as required by independent claim 9. These interchangeable pads are simply designed to massage the soles of a

person's feet. As such, one would have no reason to combine the teachings of Naruse et al. with those of Kim and/or Dolan.

Accordingly, it is respectfully submitted that independent claim 9 patentably distinguishes over the art of record.

Claims 10 and 12 depend directly from independent claim 9 and include all of the limitations found therein. Each of these dependent claims include additional limitations which, in combination with the limitations of the claims from which they depend, are neither disclosed nor suggested in the art of record. Accordingly, claims 10 and 12 are likewise patentable.

B. Claims 11 and 13

Claims 11 and 13 have been improperly rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,925,183 to Kim in view of U.S. Patent No. 5,066,000 to Dolan, U.S. Patent No. 6,210,349 to Naruse et al., and further in view of U.S. Patent No. 6,029,962 to Shorten et al. Appellant submits that claims 11 and 13 patentably distinguish over the combination of Kim, Dolan, Naruse et al. and Shorten et al. for at least the reasons set forth below.

The arguments set forth above with respect to claims 9, 10 and 12 are incorporated herein as if fully set forth. As described above, Neither Kim, Dolan or Naruse et al., teach or suggest a belt kit for a treadmill comprising "at least **two separate belts** dimensioned for use on the treadmill," "a first belt of the at least two separate belts having a first continuous, consistent surface," "a second belt of the at least two separate belts having a second continuous, consistent surface," wherein "the first belt and the second belt are **dimensioned for direct foot contact**," and "the first belt is dimensioned to impart proprioceptive demands on the foot, ankle and lower leg different from those of the second belt," as required by independent claim 9.

Shorten et al. does not remedy any of the deficiencies of Kim, Dolan and/or Naruse et al.. Shorten et al. does not teach or suggest at least two separate belts each having a continuous, consistent surface, that are dimensioned for direct foot contact and that impart different

proprioceptive demands on the foot, ankle and lower leg, as required by independent claim 9. As such, even if one were to combine the teachings of Kim, Dolan, Naruse et al. and/or Shorten et al., one would not arrive at the present invention as defined in independent claim 9.

Claims 11 and 13 depend directly from independent claim 9 and include all of the limitations found therein. Each of these dependent claims include additional limitations which, in combination with the limitations of the claims from which they depend, are neither disclosed nor suggested in the art of record. Accordingly, claims 11 and 13 are likewise patentable.

C. Conclusion

In view of the arguments set forth above, Appellant respectfully submits that each of pending claims 9-13 is in immediate condition for allowance and requests that the Board order the withdrawal of the pending rejections.

VIII. CLAIMS

A copy of the claims involved in the present appeal is attached hereto as Appendix A. As indicated above, the claims in Appendix A include the amendments filed by Appellant on June 26, 2007.

Dated: May 27, 2008

Respectfully submitted,

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APPENDIX A

Claims Involved in the Appeal of Application Serial No. 10/772,014

9. A belt kit for a treadmill, the belt kit comprising:

at least two separate belts dimensioned for use on the treadmill, the at least two separate belts each comprising a base having a plurality of projections extending upward from the base;

a first belt of the at least two separate belts having a first continuous, consistent surface;

a second belt of the at least two separate belts having a second continuous, consistent surface,

wherein the first and the second surfaces are different from each other in at least one of a size of the plurality of projections and a surface treatment,

the first belt and the second belt are dimensioned for direct foot contact, and

the first belt is dimensioned to impart proprioceptive demands on the foot, ankle and lower leg different from those of the second belt.

10. The belt kit according to claim 9, wherein at least two of the plurality of projections on one of the at least two separate belts have different heights.

11. The belt kit according to claim 9, wherein at least two of the plurality of projections on one of the at least two separate belts have a different modulus of elasticity.

12. The belt kit according to claim 9, wherein the plurality of projections of the first belt are different in height than the plurality of projections of the second belt.

13. The belt kit according to claim 9, wherein the plurality of projections of the first belt have a different modulus of elasticity than the plurality of projections of the second belt.

APPENDIX B

No evidence pursuant to §§ 1.130, 1.131, or 1.132 or entered by or relied upon by the examiner is being submitted.

APPENDIX C

No related proceedings are referenced in II. above, hence copies of decisions in related proceedings are not provided.